

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2017

PRONOUNCED ON:13.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.23239 of 2017
and Crl.M.P.No.13521 of 2017

1.S.Thiyagarajan
2.P.Vijayakumar
3.A.Suresh Kumar
No.6, 7 & 8

.. Petitioners/Accused

Versus

The State rep.by
The Inspector of Police,
Vigilance and Anti-Corruption,
Namakkal.

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in Spl.C.C.No.96 of 2017 on the file of the learned Chief Judicial Magistrate, Namakkal and quash the complaint filed by the respondent and consequential all further proceeding as against the petitioners.

For Petitioner .. Mr.B.Kumar, Sr. Counsel for
Mr.S.Senthil

For Respondent .. Mr.P.Govindarajan,
Addl.Public Prosecutor
(Crl.side)

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O R D E R

This Criminal Original Petition is filed to quash the proceedings in Spl.C.C.No.96 of 2017 on the file of the learned Chief Judicial Magistrate, Namakkal.

2.The petitioners are the accused (A6, A7 and A8) in Special C.C.No.96 of 2017 and they have been charged for the offences under Section 120(B) r/w 167, 477(A), 420 and 409 IPC r/w 13(2) r/w 13(1) (c) (d) of Prevention of Corruption Act,

1988 r/w Section 109 IPC. The petitioners herein are the persons managing the affairs of Modern Institute of Catering Technology and Hotel Management, Rasipuram, Namakkal District. Based on the complaint registered by DV & AC, Namakkal, alleging that the funds allotted to disburse the scholarship for Adi-Dravida students studying in Technical Institutes has been impersonated by the petitioners institute and other institutes similar to that of the petitioners institute in connivance with public servant. Whereas the specific allegation against the petitioners institute is that the first petitioner Thiyyagarajan as Chairman of Modern Institute of Catering Technology and Hotel Management, Rasipuram, has fabricated false documents as if 146 Adi-Dravida students have joined in his Institute during the academic year 2009-2010 and had taken grant from the Government for Rs.10,16,400/- as scholarship for 140 students and equal amount by fabricating the records, though only 40 students took examination from his Institute during the academic year 2009-2010.

3.The learned Senior Counsel appearing for the petitioners would contend that learned Chief Judicial Magistrate without applying his mind, has taken the complaint on file and the order passed by the trial court while taking the complaint on file is cryptic and non-speaking. The statements of witnesses who have been examined by the prosecution had confirmed that they were admitted in the petitioners' institute and had undergone training and they have not paid any fees for the training. While so the allegation made in the Final Report that only 40 students studied in the petitioners' institute during the academic year 2009-2010 is factually wrong and the further allegation that Rs.10,16,400/- for 140 students was reimbursed twice by the petitioners institute is also false and baseless.

4.Further the learned Senior Counsel for the petitioners also submitted that in so far as the petitioners institute is concerned it functions at Rasipuram in the name of Modern Institute of Catering Technology and Hotel Management. For the academic year 2009-2010 for 147 students, Rs.7,350/- was remitted into the account of Labour and Employment Department for the issuance of Industrial School Leaving Certificate and Rs.1,250/- for inspection charges and Rs.3675/- for the issuance of ID Card for 147 students. While so, there is no basis to allege that only 50 to 60 students studied during the academic year 2009-2010 in the petitioners' institute and the petitioners' institute had excessively claimed scholarship as if 147 students studied in their institute.

5.The learned Senior Counsel appearing for the petitioners further submitted that while the cheque bearing No.025679 for Rs.10,16,400/- was paid as grant for admitting 140 students in the petitioners' institute by name "Modern Institute

of Catering Technology and Hotel Management Industrial School, Rasipuram," the other cheque bearing No.025360 for Rs.10,16,400/- for 140 students had been issued in favour of "Modern Institute of Catering Technology and Hotel Management Institute, Namakkal" which has no connection with the petitioners' institute. The said cheque being issued as bearer cheque and encashed by one A.Sathis, as representative of that institute. While so, without any material for implicating the petitioners in respect of the second payment through cheque bearing No.025679, the petitioners are arrayed as accused and forced to face trial.

6.Per contra, the learned Additional Public Prosecutor appearing for the respondent in his counter has stated that as far as disbursement of scholarship for Adi-Dravida students undergoing training in technical institute is concerned for the academic year 2009-2010. G.O.Ms.No.1485 Social Welfare Department dated 23.7.1985 is relevant Government Order and not the subsequent Circular dated 13.6.2012 of the Commissioner of Adi-Dravidar Welfare, Chennai, as contended by the learned Senior Counsel for the petitioners.

7.As per the guidelines which was prevailing during the year 2009-2010, Adi-Dravida students are entitled to get scholarship only if they have 75% of attendance and the scholarship should be disbursed to the students in the presence of their parents. Violating the said guidelines the petitioners have obtained grant from the Government without admitting Adi-Dravida students as claimed. The statement of L.W.15 Tmt.Revathi, it is evident that out of 147 students enrolled for admission in the petitioners institute for the academic year 2009-2010 only 60 students took up the examination and rest of them were not permitted to take up examination or failed to take up examination for want of attendance. Those, students are not entitled for scholarship. However, the petitioners institute has claimed scholarship for all the students. The students in whose name scholarship were drawn have stated that they were not paid any scholarship by the institute which they should have done immediately on receipt of the grant from the Government. Hence there is sufficient material to show that the petitioners have cheated the Government by producing fraudulent document as if it is genuine and withdrawn huge sum of public money.

8.In so far as the allegation of duplication in claiming grant, the learned Additional Public Prosecutor submitted that with the intention to defraud the funds of the Government, the officials have given uncrossed bearer cheque in the name of "Modern Institute of Catering Technology and Hotel Management, Dharmapuri" and the same has been withdrawn by one A.Sathis affixing the seal of the petitioner institute. A person who has withdrawn money is the representative of the petitioners

institute. The identity of the person who represented himself as A.Sathis is within the exclusive knowledge of the petitioners herein and materials are available to show, by impersonation fraudulently the petitioner institute has received double payment, while one payment made to them is in excessive and drawn fraudulently by producing fabricated records as if 147 students have completed the course and taken up the examination while only 60 students took up examination in the year 2009-2010.

9. Heard the learned Senior Counsel for the petitioners and the learned Additional Public Prosecutor for the respondent and perused the records.

10. On perusal of the records and submissions made by the respective counsels, this Court finds that the petitioners institute has not admitted 147 Adi-Dravida students during the academic year 2009-2010 and 147 Adi-Dravida students have not undertaken examination for the academic year 2009-2010. Only around 60 students have taken up examination. As per the G.O. prevailed during the year 2009-2010, the students who have taken up examination alone are entitled for scholarship. Further the students who have attained 75% attendance alone were entitled to take up examination. The statements of students recorded by the prosecution indicates that these students have not taken up the examination at all or some of them have taken up their examination during the different academic years and not during the academic year 2009-2010. Therefore, whatever the grant paid to the petitioners institute for the academic year 2009-2010 is not in accordance with the number of students took up the examination for the academic year 2009-2010.

11. Therefore, having obtained grant for 140 students as if such number of students have taken up examination is prima facie a false statement and any grant obtained based on the false statement and fabricated documents surely attracts offence under Section 477A and 420 IPC and other penal provisions. It is too premature to conclude that there is no material against the petitioners herein while the statements of witnesses and the grant drawn by the petitioner clearly indicates excess grant has been claimed and withdrawn. Regarding the second payment which according to the prosecution is the double claim in connivance with the officials, the involvement of the petitioners cannot be ruled out. The name, similarity and the manner in which the cheque has been issued uncrossed and withdrawn by one A.Sathis, prima facie indicates the involvement of the petitioners institute.

12. Though the trial court order taking cognizance does not explicitly stated reason for taking cognizance, the very order to take the case on file indicates application of his mind

and satisfaction to cause summons to the accused. Summoning the accused is the manifestation of application of mind. Hence, this court finds no substance in the petition to interfere.

13.In the result, this Criminal Original Petition is dismissed. Consequently, Crl.M.P.No.13521 of 2017 is closed.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

gr.

Copy to:-

- 1.The Chief Judicial Magistrate, Namakkal
- 2.The Public Prosecutor, High Court, Madras.

ORDER IN
CRL.O.P.NO.23239 of 2017

NM [CO]
RR 27/11/2017



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